

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUDITH SIZEMORE,

Plaintiff,

vs.

No. CIV 04-00272 JP/DJS

**STATE OF NEW MEXICO,
NEW MEXICO DEPARTMENT OF LABOR, et al.,**

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION TO VACATE PROVISIONAL
ORDER GRANTING MOTION FOR ATTORNEYS' FFES**

Plaintiff, **JUDITH SIZEMORE**, by and through her attorney, Dennis W. Montoya, Montoya Law, Inc., hereby moves the Court for an Order vacating its previous order granting attorneys' fees. As grounds in support of her motion, Plaintiff states:

1. On February 25th, 2005, the RCI Defendants filed their Motion for Attorneys' Fees.
2. Plaintiff's Response to that Motion was due on or before March 14th, 2005.
3. Sometime before March 14th, 2005, undersigned counsel called and requested an extension from William Madison, to which Mr. Madison graciously agreed.
4. Said extension was until March 28th, 2005.

5. On March 28th, 2005, undersigned counsel called to request until Friday, April 1, 2005, to respond to his clients' motion. Mr. Madison agreed.

6. Before undersigned counsel could complete the response, the Court provisionally granted the motion on March 31st, 2005.

7. The Court also set a hearing on the matter in order to allow the Plaintiff to offer evidence on her ability to pay any award of fees that was granted and to inquire into the redacted portions of the affidavit of Arlyn Crow.

8. Under the Local Rules a response is due fourteen (14) days after the service of any motion.

9. However, upon consent of the parties, this time limitation may be extended.

10. In granting the RCI Defendants' motion, the Court found that Ms. Sizemore had not filed a response within the time limit set for by D.N.M.LR-Civ. 7.6 (a) and thus had consented to the granting of the motion.

11. When read in conjunction with D.N.M.LR-Civ. 7.3(b), which requires the movant to file a Notice of Completion of Briefing at the close of the briefing period, D.N.M.LR-Civ. 7.6(a) appears to suggest that a motion for an extension is unnecessary unless a motion is opposed.

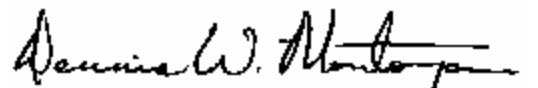
12. The Defendants did not oppose the requested extensions nor did they file a Notice of Completion of Briefing. As a result, Plaintiff did not realize that a motion to extend had to be filed in the Court record.

13. Although Plaintiff can be faulted for failing to either file a motion with the Court or otherwise keep the Court informed of the pendency of her response, it would be in the best interests of justice to vacate the order granting attorneys' fees and consider her response and the Defendants' Motion on the merits.

14. Defense Counsel William C. Madison, attorney for RCI and the RCI Defendants was consulted with respect to the relief requested in this motion, and has expressed his non-opposition thereto.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order vacating its provisional order of March 31st, and consider her response, contemporaneously filed herewith.

Respectfully Submitted:
MONTOYA LAW, INC.



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UNOPPOSED:

Telephonically on April 25, 2005

William C. Madison, Esq.
Attorney for RCI and RCI Defendants

I HEREBY CERTIFY that on May 4, 2005,
I caused to be mailed and faxed to opposing counsels of
record at the following addresses a true and correct
copy of the foregoing, together with a copy of
this Certificate of Service.

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